WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 984

IN THE MATTER OF: Served October 24, 1969

Application of D. C. Transit System, Inc., for Authority to Increase Fares.	Application No. 573
Application of D. C. Transit for Suspension of the Program for the Purchase of New Buses.	Application No. 553 Docket No. 201

APPEARANCES:

HARVEY M. SPEAR, MANUEL J. DAVIS, BERT DEUTSCH, and LEON SPOLIANSKY, appearing on behalf of D. C. Transit System, Inc., applicant.

HUBERT B. PAIR, GEORGE F. DONNELLA, and C. BELDEN WHITE, appearing on behalf of the Government of the District of Columbia, protestant.

MISS DIANA KEARNY POWELL, appearing on behalf of herself as a protestant.

MRS. PATRICIA WALD, appearing on behalf of Citywide Welfare Rights Organization, protestant.

JOEL YOHALEM, appearing on behalf of himself as a protestant.

PETER PARKER, appearing on behalf of the State of Maryland, protestant.

ALFRED S. TRASK, appearing on behalf of the D. C. Association of Civic Organizations, protestant.

MALAKU J. STEEN, appearing on behalf of himself and supported by the Greater Washington, D. C. Area Council of Senior Citizens, protestants.

WILLIAM STALEY and ROGER W. TITUS, appearing on behalf of the City of Rockville, Maryland, intervenor-protestant.

DOUGLAS N. SCHNEIDER, JR., General Counsel, Washington Metropolitan Area Transit Commission.

BEFORE GEORGE A. AVERY, CHAIRMAN, AND WILLIAM O. DOUB, VICE CHAIRMAN.

I

THE PROCEDURAL BACKGROUND

On May 29, 1969, D. C. Transit System, Inc., (Transit) filed with the Commission an Application in Support of Change in Schedule of Fares. The application was accompanied by a revised schedule of fares, set out in WMATC Tariff No. 41, to be effective June 28, 1969. At the same time, Transit filed testimony and exhibits as required by Commission Regulation 56-01(c).

The application and tariff, as revised, proposed the following changes in fares:

1. Cash fare of 35¢ for regular route service within the District of Columbia (presently 30¢).

2. Five tokens for $1.60 for regular route service within the District of Columbia (presently 4 for $1.20).

3. Cash fare of 70¢ for Capitol Hill Express Service or 38¢ cash fare and a valid D. C. Transit transfer or one token (presently 65¢).

4. D. C. Downtowner (Minibus) cash fare of 15¢ (presently 10¢).

5. Maryland local intrastate service:

   35¢ cash fare for the first two zones of carriage, or any part thereof (presently 30¢).

6. Maryland - District of Columbia local interstate service:

   50¢ cash fare for regular route service within the District of Columbia and the first zone of carriage, or any part thereof, in Maryland (presently 45¢).

7. Maryland - District of Columbia express interstate service:

   55¢ cash fare (or 23¢ cash fare and a valid D. C. Transit transfer or one token) between the District of Columbia and the Maryland - District of Columbia Line (presently 45¢).

The Commission received 14 protests against the revised rate schedule. On June 27, 1969, we issued Order No. 958 suspending the revised tariff and setting a date for public hearing on the matter.

On July 23, 1969, in Order No. 968, we consolidated the rate application for hearing purposes with an earlier application of Transit seeking suspension of the program for the purchase of new buses. The issues raised by the two applications were, in our judgment, interdependent.

Notice of the hearings was given in accordance with Commission Rules and Regulations. It commenced July 28, 1969, with the Government of the District of Columbia; Diana K. Powell, pro se; Citywide Welfare Rights Organization; Joel Yohalem, pro se; the People's Counsel of the State of Maryland; D. C. Federation of Civic Associations, Inc.; Malaku J. Steen, pro se; and the City of Rockville, intervenor, appearing as protestants. In addition to six sessions of formal hearings, two evening hearings were held, one in the District of Columbia and one in Maryland, in order to encourage public comment, and sixteen persons entered appearances and spoke on the issues involved.

When the formal proceedings ended on September 24, 1969, the official transcript included 1,410 pages of testimony and 75 exhibits. In support of its applications, Transit had presented testimony by Senior Vice President J. Godfrey Butler; Vice President and Comptroller Samuel O. Hatfield; and Vice President George P. Keyser. It had also offered the testimony of independent consultants John F. Curtin as an expert on rate of return, and George D. Hollander as an expert on cost-of-living trends, and through the Commission's subpoena power, had caused William A. Boleyn, Acting Deputy Director of the General Government Management Division of the Bureau of the Budget, and Jackson Graham, General Manager of the Washington Metropolitan Area Transit Authority to appear.

Staff members Charles W. Overhouse, Chief Engineer; Richard C. Kirtley, Chief Auditor; and Sheldon A. Kinbar, Urban Transit Planner gave testimony, and the staff also presented independent consultants Robert L. Banks and George B. Dutton to testify on the subject of rate of return.

All but two of the formal protestants either made a statement or proferred evidence.1/ Mayor Walter E. Washington appeared for protestant District of Columbia and intervenor City of Rockville presented the testimony of its Director of Planning, Robert W. Lanham.

On September 25, 1969, Order No. 979 was issued, further suspending the tariffs until October 24, 1969.

1/ The two were Joel Yohalem and Malaku J. Steen.

II

PROJECTED FINANCIAL RESULTS

A. The Historical Period

Both the company and the Commission staff used the 12-month period ended February 28, 1969, as the historical year upon which to base forecasts for the future annual period. The company reported a net operating loss for the period of $114,916. The Commission staff, after thorough audit, made adjustments which had the net effect of reducing operating costs by $92,441,[2/] so that the net operating loss for the historical period stood at $25,950. As the adjustments by the staff were not challenged or rebutted, the figures presented by the staff in its Exhibit No. 3 will be accepted as the base for forecasting the operating results of the future annual period. Accordingly, we find that the operating results for the 12 months ended February 28, 1969, were:

2/ The major adjustments made by the staff were a $29,000 correction of depreciation expense and a $32,000 adjustment for three salaried personnel whose cost should have been allocated to non-transit operations.

TABLE I

	12 Months Ended February 28, 1969 Adjusted
Operating Revenues:	
Passenger	$ 32,973,938
Schoolfare Subsidy	779,733
Charter	1,875,355
Government Contracts	119,223
Station and Vehicle	144,867
Other	44,466
Total	$ 35,937,582
Operating Revenue Deductions:	
Operating Expenses	$ 32,501,566
Taxes, Other Than Income Taxes	1,175,983
Income Taxes	17,419
Depreciation	2,463,080
Amortization of Acquisition Adjustment	(194,516)
Total Operating Revenue Deductions	$ 35,963,532
Net Operating Income (Loss)	(25,950)
Operating Ratio	100.07%
Rate of Return on Operating Revenues	(.07%)

In addition to this operating loss, of course, the company incurred interest expense of $1,286,987 in the historical period, making a total loss, from the owners' standpoint, of $1,312,937.

The statement in Table I includes a credit of $194,516 for amortization of the acquisition adjustment account. Order No. 981 of this Commission, issued October 17, 1969, established a corrected schedule for the amortization of the acquisition adjustment retroactive to January 1, 1964; that order directed that a book entry be made correcting the status of the acquisition adjustment through December 31, 1968. It also directed the company to begin the new schedule of monthly amortization retroactive to January 1, 1969. Accordingly, the historical operating statement in Table I would more accurately reflect the company's operating results for regulatory purposes if the new amount for acquisition adjustment were shown.

The corrected figure would be $345,666. There is no need to utilize the corrected figure in reporting the historical results. In forecasting operating results for the future annual period, however, the new amortization figures for the future annual period will be computed directly on the basis of the methodology adopted in Order No. 981.

B. Revenues and Expenses - At Present Fares

Our next task is to forecast the company's operating results in a future annual period if fares are maintained at their present levels. On this subject, there are issues in dispute between the company and the staff.

The company presented a projection for the 12 months ending June 30, 1970. It forecasted an increase of $3,108,000 in operating revenues and an increase of $3,628,000 in operating costs, resulting in a net operating loss for the period of $634,873, before interest charges.

The Commission staff presented its own projections, and its analysis indicated that there would be a net operating income of $332,027 in the same period. The issues thus raised must be disposed of by us and we turn first to the question of revenues.

1. Disputed Items of Revenue - There was, first, disagreement as to the amount of passenger revenues which would be forthcoming in the future annual period. The company initially projected the number of one-way rides in the future annual period at 116,661,255. It reached this result by studying the number of rides in the various fare categories during the first quarter of the years 1965 through 1967 and establishing the relationship between the rides in the first quarter of the year and the total rides for the entire year. The ratio thus developed was applied to the actual first quarter rides for 1969 to produce an annualized figure. The Commission's engineering staff was of the opinion that ridership during the first quarter of 1969 was depressed, due to a number of general factors. The staff therefore adopted the same general procedure as that used by the company, except that they used as a base the actual rides for the second quarter of 1969 compared with second quarter ridership in the earlier years. This produced a projected number of one-way rides totaling 117,159,348. On rebuttal, the company witness recalculated his projection for the future annual period by utilizing the experience of the first six months of 1969 rather than the first quarter alone. This produced a revised figure of 116,924,259. Thus, as finally presented, the company projected 235,089 less riders than the staff.

We agree completely with the staff's attack on the company's original projection. Use of figures for one quarter, and particularly a quarter which tends to have low ridership, will produce a distorted result. However, as between the staff's analysis of the second quarter and the company's use on rebuttal of six month figures, we think the company's approach is preferable. It takes into account a longer period of time, thus providing a broader data base. We will, therefore, utilize the company's rebuttal projections in determining passenger revenues.

Company Exhibit No. 26, based upon the rebuttal estimate, projects passenger revenues at present fares to be $35,322,571. We also accept, as we logically must, the company's revised estimate of school fares, which produces a projected schoolfare subsidy of $1,507,060.

The only other disputed revenue item was the projection of charter revenues. The company initially projected revenues of $1,948,021, while the staff, analyzing the trend of past years, estimated that charter would produce $2,206,211. On rebuttal, the company witness detailed some specific guidelines which underlay his original estimate. He also revised his original estimate upward in order to give effect to increased rates which had recently been instituted by the company for its charter work. Thus, the company's final estimate of charter revenue was $2,000,932.3/

This type of dispute is difficult to resolve. We are dealing essentially with opinions as to the course of future events. After careful consideration, we have decided to accept the company projection. It was made by the individual most directly involved in charter work and he based his result on direct knowledge of present conditions and present future conditions in the charter market. He has explained the basis for his reasoning and it is not without logic and reason. His forecasts have been accurate in the past.

The staff's methodology, based on trends, is a perfectly valid one and we might accept their approach in normal circumstances. However, the trends in the area of charter business were thrown off by the unfortunate events of 1968 and reliance on this data, even making allowance for these peculiarities, is tricky at best. We think that, in the present case, the wiser course is to use the company's somewhat more subjective but somewhat more directly derived figure.

3/ The actual amount in dispute is not the $205,279 difference between the company and staff estimates. The staff recognized that the increased charter revenues would produce increased expenses. The actual net difference is $62,000.

2. <u>Disputed Items of Expense</u> - We come now to the differences encountered between the company and the staff in the projection of operating revenue deductions. The company projected operating expenses of $36,249,117, while the staff concluded that they would total $35,683,056. When the twelve months ended February 28, 1969, are compared with future annual period projections, the company's figures project an increase in operating expenses of $3,689,019, while the staff forecast an increase of only $3,181,489. The major portion of the projected increase is related to labor and labor-related items. The company projection places $3,428,685 in this category. This amount includes $2,843,941 in additional wage payments, some based on contractual wage adjustments through May 18, 1969, and some based on forecasted cost-of-living increases through June 28, 1970. This latter area, i.e., projected cost-of-living increases, was a subject of much discussion in this record. The company, in an effort to persuade us to modify our earlier stands on this subject, put into the record extensive evidence in support of its projections of cost-of-living increases beyond the date on which it filed its rate application, relying on the testimony of an independent economic analyst. The staff's projections were based on our previously expressed policy. Thus, Staff Exhibit Nos. 4 and 5 recognized all wage increases through June 29, 1969. Following the procedure we have established in past rate cases, the staff would also make an additional adjustment for the six-cent cost-of-living increase which went into effect on September 28, 1969.[4/] This is expected to cost the company an additional sum of $258,620 by June 30, 1970. Thus, the staff would allow a total increase of $3,440,109. There still remains a difference between the staff and the company in the amount of $169,960 for projected cost-of-living increases which, if the present labor contract were to continue, would take effect at the end of December 1969, March 1970, and June 1970.

We are squarely presented, therefore, with the need to determine whether to continue our past policy of recognizing only those cost-of-living increases which are required by conditions as of the date of our order. There can be no doubt that this policy has tended to underestimate the expenses which the company has actually incurred.

In recent times, and particularly during the last two years, the company has faced constant escalation of wages due to the cost-of-living clause. Therefore, we must consider very carefully the possibility that the additional cost-of-living wage adjustments forecast

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4/ The company had forecast a seven-cent increase for September 28, 1969, and had made its projections accordingly. The company figures must be adjusted to correct this error.

in Company Exhibit No. 3, in the amount of $169,960 will, in fact, materialize during the future annual period involved in this rate case. If we were to look only at past experience, we could be forced to conclude that these cost-of-living increases will actually occur. However, we are acutely aware that their occurrence, vel non, is dependent upon national and local economic conditions.

It seems to us that at present, and more so than at any recent time, it is impossible to predict with any certainty the future course of those conditions.

The newspapers, periodicals and journals coming to our attention on a daily basis contain a great number of dicussions and predictions regarding the direction of the economy and the impact on the inflationary trend. Everything from continued boom to recession is predicted.

We are also aware, of course, of the Administration's efforts to control inflation. Paul W. McCracken, Chairman of the Council of Economic Advisors, and Arthur F. Burns, Presidential Councilor on Economic Matters, have both spoken of a slowdown in price increases and a general easing of inflation by the end of 1969. The Administration has announced its determination to continue its present stringent fiscal and monetary policies to assure this result.

In short, we simply do not believe that at the present time, despite past experience, it would be a prudent course to assume the continuation of an upward trend in the cost of living. To engage in such conjecture is difficult at best, and at this juncture, it seems to us impossible, particularly in the context of striking a proper balance between investors and transit riders. We will not, therefore, allow the additional $169,960 projected by the company for future cost-of-living increases. We will, therefore, allow additional wage expense totaling $2,630,877.[5/]

5/ In other words, the adjustment made by the Commission staff on Exhibit No. 5, then, will be further adjusted by adding $258,620 to the hourly increase figure, representing the known six-cent increase on September 28, 1969.

The next disputed expense item involves charter expense. The staff proposed an adjustment of $180,861 to reflect increased mileage for charter work. This adjustment was based on the staff's projection of higher charter revenues than those predicted by the company. We have decided to accept the company's revenue projection. See p. 7, supra. Thus, the staff's suggested figure will be reduced to $43,723, to agree with the company's revenue projection.

Next, the figure of $451,489 for pension contribution increases, as set out in the staff presentation, will be scaled upward to $477,351 in order to coincide with the adjustment in hourly wages made above. There was a question raised in this record as to allowing pension and health fund contributions in view of the fact that the company is in arrears in paying these items. The record indicates, however, that payments are currently being made and there is no basis for concluding that they will not be made in the future annual period. We understand that arrangements are being made to provide collateral security for the arrearages. We find no basis for disallowing this expense.

The next item is the projection of salary increases for non-union personnel. The staff did not accept the company's projected increase of $135,429 because its payroll study for the preceding four calendar years disclosed that, despite annual increases granted to salaried employees, the total salaried payroll cost was actually decreasing each year, due to attrition, failure to replace senior officers as they retired, and replacing other employees, if at all, with persons at a lower wage level. The Commission accepts the stand of the staff on this matter. However, we also accept the data reported by the company in its rebuttal to the effect that a 15-cent-per-hour increase was granted to salaried employees on August 24, 1969. This increase will amount to $43,556 during the remainder of the future annual period and this sum will be allowed as an operating expense for that period.

This completes the discussion of disputed items of operating expense. As to certain increases, i.e., an item of $115,681 for track removal costs over and above the balance remaining in the track removal reserve and a minus adjustment of $34,499 for non-recurring and miscellaneous items, there was no dispute.

There are certain questions to be considered with respect to certain operating revenue deductions, other than operating expenses.

The first is the forecast for depreciation. For reasons discussed at p.20 infra, we have in fact decided to suspend the bus purchase requirement for the time being. The staff presented its opinion that, if the company is not going to be required to purchase 85 new buses each year, the depreciation accrual basis should be changed to 17 years rather than the present 14. Depreciation has nonetheless been projected on the regular standard straight-line basis, including the depreciation of buses acquired since 1956 on a 14-year write-off basis (subject to salvage value of 4% of original cost).

No specific testimony was placed in the record establishing 17 years as the proper basis. The staff's engineer did introduce some raw data (Exhibit 1, Appendix S) showing the age of retired buses. However, a review of the engineer's listing shows that, for 1969, all bus retirements were the old "White" buses, none of the later model General Motors make. Testimony from the company indicated that there was doubt as to the longevity of the later model buses now in use by the company. There has been no firm experience as to the actual effective service life of the later model buses.

We note that the average age of the bus fleet of D. C. Transit at February 28, 1969, per company Exhibit No. 5, is 8.31 years, with 74.3% of the fleet air-conditioned. Under the circumstances, the Commission does not see that it does violence to regulatory theory or to accounting theory to permit the continuation of a 14-year depreciation rate during a suspension of the purchase program. The interests of the ratepayer are protected by the fact that the Commission has placed the company on a unit-cost basis for depreciation, so that whenever the depreciation accrual on a specific bus reaches 96% of the original purchase price, further accruals of depreciation on that unit cease.

It should be clearly understood, of course, that suspension of the bus purchase requirement has enabled us to refrain from increasing depreciation expense by $203,417 in the future annual period. This is the amount of added depreciation expense which would result from the bus purchase.

Next, an adjustment must be made to the amortization of the acquisition adjustment account. The figures presented on the record utilized the figure of $194,516 for this item, pursuant to the amortization practice established by Order No. 564. However, in Order No. 981, we have modified this amortization method in accordance with the opinion of the Court of Appeals in Williams v. WMATC, D. C. Cir. Docket No. 20,200 et al., decided October 8, 1968, Under the new amortization method, which is tied to accrual of depreciation on properties acquired by the company in 1956, the proper amortization amount for the future annual period is $173,339.

These, then, are the disputed items of revenues and expenses in the future annual period. Table II, below, reflects all of the adjustments mentioned above:

TABLE II

OPERATING STATEMENT
FUTURE ANNUAL PERIOD
ENDING JUNE 30, 1970 AT PRESENT FARES

Operating revenues:	
Passenger	$ 35,322,571
Schoolfare subsidy	1,507,060
Charter	2,000,932
Government contracts	123,784
Station and vehicle	144,867
Other	44,466
Total	$ 39,143,680
Operating revenue deductions:	
Operating expenses	$ 35,873,955
Taxes, other than income taxes	1,254,681
Income taxes	13,500
Depreciation	2,351,080
Amortization of acquisition adjustment	(173,339)
Total operating revenue deductions	$ 39,319,877
Net operating income (Loss)	$ (176,197)

Thus, if Transit's fares are not raised, the company will experience a net operating loss during the future annual period of $176,197. After meeting interest charges of $1,196,926 6/ the total loss for the period will stand at $1,373,123.

A financial picture of this nature calls for action adjusting the fare structure to furnish the company with revenues sufficient

6/ Per Co. rebuttal, Exh. 35

to meet its operating expenses and provide a fair return. The next step in our deliberations is to consider the level of return which we should allow.7/

C. The Return To Be Allowed

In three recent orders relating to fare levels for Transit, we have discussed the principles to be applied in a determination of the return to be allowed. (Orders 684, 773 and 880.) As we noted in Order No. 880, the return must be one that will enable Transit "to cover interest on its debt, pay dividends sufficient to continue to attract investors, and retain a sufficient surplus to permit it to finance down payments on new equipment and generally to provide both the form and substance of financial strength and stability." D. C. Transit System, Inc. v. WMATC, 350 F2d 753 at 778 (D. C. Cir. 1965). In a determination of what amount of return will allow the company to achieve these general goals, we must consider such matters

> ". . . as the capital programs in prospect, what such programs entail in terms of down-payments as well as financing, the cost of borrowing money, working capital needs, the desirable ratio of debt to equity, the incentives required by a stockholder to keep his money in the business and the dividends and growth rates requisite to supply these incentives, the opportunities in these respects provided in comparable businesses, and [the] related matters. . ." D. C. Transit System, Inc. v. WMATC, supra, 350 F2d at 779.

As it has in other recent rate cases, Transit presented the testimony of Mr. John F. Curtin on the subject of rate of return. Mr. Curtin is a member of the firm of Simpson and Curtin, a transportation consulting firm. The staff presented the testimony of Mr. Robert L. Banks and Mr. George B. Dutton, Jr., President and Senior Associate, respectively, of the firm of R. L. Banks and Associates, Inc., consulting transportation economists.

1. Testimony of John F. Curtin - Mr. Curtin's testimony followed the same pattern of his earlier presentations to the Commission and he used much of the same material he had presented on those earlier occasions.

He recommended a return of $2,700,000 to Transit. He stated that in arriving at that sum, he was guided by the concept that a fair rate of return requires consideration of the amount needed by Transit to safeguard its service, to attract capital and to provide sufficient income,

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7/ Issues have been raised in this proceeding on the question whether we should provide any fare increase despite a showing of losses under the present fare structure. Those issues are dealt with in detail at pp. 24-32 infra. We continue with a standard analysis here for the sake of continuity.

over and above operating expenses, to ensure the financial soundness of the company, after giving due consideration to the inherent differences between this business and other utilities, as well as other industries generally.

He then discussed various factors which, in his judgment, distinguished the transit industry from other utilities and from unregulated industries, insofar as its risk attributes and its attractiveness to investors are concerned. He included such factors as automobile competition, labor costs, absence of natural growth, identification with low-income areas, inelasticity of costs, the absence of opportunities for labor savings, Federal aid for highways and public assistance to competing transit facilities. He concluded that these factors make the transit industry more risky than other industries, thereby causing transit securities to be more speculative.

Mr. Curtin's data included tabulations showing the operating ratios of (a) public utilities serving the Washington Metropolitan Area, (b) railroads serving the entire country, and (c) a group of six privately-owned transit systems. The witness testified that Transit is a typical transit utility because its characteristics are quite similar to most other transit companies; the similarity includes trend of patronage, population density, and in the relative degree of use of transit by the community. He emphasized the narrow degree of margin between revenues and expenses of Transit as compared to other utilities, by portraying the operating ratio of D. C. Transit for corresponding years. He emphasized that this comparison illustrates how little margin Transit has to withstand various economic impacts, such as a 5% increase in expenses, in comparison with other utilities.

He discussed the risks inherent in the transit business from the long-term viewpoint, and discussed the long-term growth of public utilities. He noted that the company's passenger volume had declined 3 percent in 1967 and 7 percent in 1968, more than the decline in those years for the industry overall. He contrasted the passenger decline for Transit with what he noted was a strong growth trend existing among other major utilities in the metropolitan area.

Mr. Curtin presented a comparative analysis of the quality of public utility bonds and notes, comparing Transit with other utilities. In addition, he presented a summary of profits and dividends paid by large public utility corporations during 1967, for comparative purposes. Mr. Curtin also presented a comparative analysis of the company with other transit systems insofar as their basic market characteristics are concerned, indicating that Washington is reasonably representative of the major metropolitan areas in this country in terms of population density -- both in the city itself and in the surrounding metropolitan area.

The witness presented a tabulation of Transit's operating revenues, operating costs, wages and salaries, and miles of service for the years 1961 through 1968, discussing and analyzing their trends. He made a comparison of labor costs between Transit and the rest of the transit industry. He presented an analysis of the comparative cost of capital among various public utility groups for 1967, including electric, gas, telephone, water and transit. He tabulated the cost of debt and equity capital among those public utility groups, again in 1967, and gave his analysis of the tabulation. Mr. Curtin concluded from this analysis that where other utility groups yield between 5.5% and 6.7% to their investors, the transit industry is required to return up to 40 percent higher.

As a basis for his conclusion that the return to Transit should be $2,700,000, Mr. Curtin named three conditions. First, he asserted that a rate of return on the fair value of the system is warranted by the risk factors in the transit industry, which he said were at least as great in Washington as in other large cities. He estimated the rate base to be $25,784,096; adding that the $2,700,000 recommended return is equal to 10.5 percent of that rate base. Second, the "short-term risk exposure" to such things as weather, unusual local events and changing local circumstances, makes desirable an operating ratio of 92.0 to 92.5 in order to give reasonable assurance that services will be operated and expanded to meet community needs. Third, he cited the need to provide adequate coverage on Transit's debt. Mr. Curtin also reveiwed the various elements for consideration in determination of return which the court had mentioned in the case we quoted at the outset of this discussion, indicating how those elements had been considered in his analysis.

In concluding, Mr. Curtin summarized the manner in which the recommended return of $2,700,000 would be distributed among debt and equity: $1,279,000 would go for interest on debt; $500,000 for dividends on stock; and $921,000 for down payments on buses and/or to retained earnings.

2. <u>The Testimony of Robert L. Banks and George B. Dutton, Jr.</u> - Mr. Banks testified as to the underlying general concepts which shaped the approach that his firm took to the question of rate of return. Mr. Dutton then provided the detailed analysis and the specific conclusions with respect to amount of return which follows from an application of those general precepts to D. C. Transit.

Mr. Banks reviewed the requirements of the Compact and the relationship of changing circumstances to the question of proper return, noting that what constitutes a fair rate of return varies over time and varies with changing circumstances. He asserted that the changing circumstances in the Washington area are reflected in the establishment of the Washington Metropolitan Area Transit Authority charged with the construction of an area-wide rapid transit system.

Changing circumstances further will result in private enterprise playing a lesser role in transit operations in Washington in the future, he believes. Furthermore, he feels that a restructuring of bus service in the Metropolitan District is inevitable as the rapid transit system is placed in operation. He believes that proper long-term solutions for public transit in Washington will involve common management of bus and rapid transit. These and other indications lead him to the conclusion that in time the buses now operated by Transit will one day be publicly operated. Hence, Transit, in his view, must be regarded as an "impermanent carrier."

In explaining his approach to the return issue in the case of an "impermanent carrier," he conceded that the Commission has no proper choice but to allow a return sufficient to cover debt service. In addition, he recommended that the safety of the debt service be assured by the establishment of a contingency fund, about which more will be said when we discuss Mr. Dutton's testimony. Most of the conventional tests of return are inappropriate when applied to an "impermanent carrier," he said, because they comprehend the attraction of capital and comparability with other firms, tests which assume permanence, according to Mr. Banks.

Mr. Banks further asserts that in his view the Commission has already discharged its obligation to the carrier to afford it the opportunity of earning such return as to make it attractive to private investors. He pointed out that through December 1968, Transit had produced a dividend payout for its shareholders of

13 percent per year on average equity. Even if Transit earned no more for its shareholders from current operations, the shareholders can expect further returns from unrealized appreciation on the company's real property. However, he conceded that the public interest requires that Transit be given a return on equity adequate to finance such new buses as the Commission may require Transit to purchase. In addition, the company requires an incentive for efficient operation during the corporate life remaining to it. He would provide that incentive through the contingency fund.

Mr. Dutton began his testimony with a discussion of the principles governing return. He enumerated the purposes of return as follows: (1) to pay interest; (2) to attract and furnish needed equity capital; (3) to compensate investors for equity capital previously furnished; and (4) to provide for contingencies. He emphasized that the level of return is related to both the risk that returns and dividends may decrease or disappear and the risk that the value of the original investment may be lost. He further asserted that a fair rate of return may not be only designed by prospective application as in the usual rate-making situation, but may also be determined retrospectively to have been earned. Finally, he observed that principles of return must be applied in the context of the situation of transit in general, and D. C. Transit in particular.

He then turned to his analysis of transit generally, and of D. C. Transit in particular. He pointed out that transit patronage and service has declined and concluded that there is no support to the contention that a continuous infusion of new capital in the transit industry is required to keep up with the demand. He contended that the capital requirements of D. C. Transit have not been increasing like those of other public utilities, because, while other utilities have expanded plant on a large scale, Transit, by contrast, has purchased new buses only as replacements, and its fleet size has not grown.

He also referred to the nationwide trend toward public operation of city transit systems. He noted that the equity holders in companies that have gone to public ownership had generally fared well in that process. He predicted that the trend to public operation will continue due to the continued, indeed increased, need for adequate, low-priced service and the increasing inability of private enterprise to provide it, albeit for reasons not necessarily attributable to the management of those enterprises. D. C. Transit, he believes, will not be an exception to that trend.

Thus, in Mr. Dutton's view, with no foreseeable prospect for growth in ridership, with coordinated subway-bus operation requiring 10 percent fewer buses than at present, and with the prospect of public ownership, D. C. Transit does not need to provide for expansion or renewal of its facilities for the long future period.

On the issue of dividend payout and return, he points out that Transit's net income has provided in excess of a ten per-~~cent return~~ per year on average equity through December 31, 1968. Dividends have yielded 13 percent per year on average equity and 70 percent per year on stockholders' original investment. During the same period, the return on gross revenue ranged from a maximum of 6.5 percent in 1963 to a loss of 0.7 percent in 1968, the mean being 3.5 percent.

These results led him to conclude that it would be reasonable not to provide a guaranteed return on equity for the future. Mr. Dutton concluded that an appropriate return for Transit would include an amount sufficient to pay interest on debt, to provide for down-payments on new buses, and to provide for contingencies. Contingencies would be provided for by the establishment of a special bank account into which earnings in excess of interest payments would be deposited. The contingency account would be drawn upon, with the permission of the Commission, whenever revenues failed to cover expenses and interest. The accumulation of money in the contingency account over a period of two or three profitable years would make it possible to allow a smaller margin in subsequent years. Then, after the account had accumulated to a safe level, the Commission could relax the requirement that all return above interest be deposited in the account. Thus, according to Mr. Dutton, there would be an incentive to earn profit.

He recommended that the return for Transit for the year ending June 1970, be; $1,216,616 for interest payments, and $293,384 for contingencies and equity incentive, for a total of $1,510,000. This return is approximately 3.7 percent of the revenues, or 6.1 percent on rate base. He further recommended that this return amount be increased to cover any increases in interest requirements, and any down-payments on new buses, if the Commission ordered the continuation of the bus-purchase program.

3. Conclusions on Rate of Return - We face once again a determination as to the proper rate of return for Transit. We have considered the same issue in recent years in our Orders Nos. 684, 773, and 880. We have had the benefit of Mr. Curtin's analysis on behalf of the company in connection with Orders Nos. 773 and 880, as well as the present proceeding. The staff has provided us with the testimony of Messrs. Roberts (No. 684), Kosh (No. 773 and 880), and Banks and Dutton (the present proceeding). One of our determinations -- that of our Order No. 684 -- has been reviewed and upheld by the court of appeals. We mention these facts in order to emphasize that we do not come to our consideration of this important issue in a vacuum. We decide the issue here, of course, on the basis of the record developed in this proceeding, but we bring to our deliberations on that record the experience of several recent endeavors along precisely the same lines.

This fact is particularly interesting to us because we find in this record that the staff's independent consultants on the subject of return have reached a conclusion, by a markedly different route, which is substantially the same as that produced by our own analysis on three past occasions. In Orders Nos. 684, 773, and 880, we reached independent conclusions that Transit's return should be on a certain general level. It should cover legitimate interest expense, of course.. Over and above that amount, we have allowed a dollar return on equity in the neighborhood of $750,000, No. 684, p.30 ; No. 773, p. 56; No. 880, p. 50. In the present proceeding, Messrs. Banks and Dutton have engaged in a severe and critical analysis of Transit's capital cost requirements. They have made recommendations as to the treatment of the return issue which can only be considered radical when considered in terms of the standard or classic analysis of this issue. Yet, they have made a recommendation as to a level of return over and above operating expenses and interest which is substantially identical with the amount allowed in our earlier orders. Thus, they would allow rates which provide $293,384 over and above interest as a "contingency and equity incentive." To this, they would add the amount needed to make down payments on required bus purchases. For an 85 bus purchase, which was the assumption underlying our earlier rate orders, this would amount to $593,300 making the total return which Messrs. Banks and Dutton would allow amount to $2,103,300. This is roughly the same amount, albeit a little higher, that we allowed in our earlier orders.

We think it appropriate, therefore, to consider the adequacy of that amount in light of the applicable tests laid down by the courts and in light of the facts developed on this record.[8/]

8/ Mr. Curtin recommended a return of $2,700,000, providing a return on equity of $1,421,000. Mr. Curtin's approach and analysis were essentially the same as expressed in his testimony in the proceedings which led to Orders Nos. 773 and 880. We have had occasion to analyze his approach thoroughly and at length in earlier orders. See Order No. 773, pp. 45-51. We will not repeat that entire analysis here. It is sufficient to note that Mr. Curtin did not take into account the effect upon risk of Transit's real estate prospects. He based his recommendation upon a comparison of average returns on rate base and operating revenues of a group of other transit companies, ignoring the experience of individual companies within the group. He relied on a required coverage of debt service, ignoring Transit's unusual capital structure. He assumed a required payment of $500,000 in dividends and he treated down payment on buses and growth in retained earnings as separate items. All of these aspects of Mr. Curtin's analysis cause us to doubt its validity and, as in our other orders, we will not rely on his approach here.

We begin by examining the adequacy of a return at the level recommended by the staff witnesses . We must first determine, obviously, what that dollar amount would be. Messrs. Banks and Dutton would allow $293,384 to cover contingencies and provide an equity incentive. To this amount, they would add a sum sufficient to cover down payments on new bus purchases. For 85 new buses, this would amount to $593,300. In view of our decision that the bus purchase requirement will be suspended, it might be argued that this entire amount should be eliminated from the return. Thus, to determine the dollar return which the consultants would allow, we must determine the impact upon the return element of our decision to suspend the bus purchase requirement.

First, we emphasize that our action on bus purchases is limited merely to suspending the requirement of bus purchases. We will still expect the company to maintain the quality of its fleet at an adequate level and to make bus purchases as necessary to accomplish that end. Further, even if bus purchases are reduced from the levels which we had been requiring, we think that the company should have some internally generated capital built up to sustain future purchases. Indeed, the adverse impact of the company's financial difficulties of recent years makes some buildup of capital from internal sources imperative. Hence, we will not reduce the required return by the entire amount which would be used as a down payment on 85 new buses. However, in recognition of the fact that we are easing the capital requirements of the company, we will reduce the return by $386,684, leaving a return to the equity holder of $500,000. In our judgment, this adjustment will provide the company with sufficient growth of internally generated capital to maintain, for the time being, the curtailed bus purchase program we contemplate. Thus adjusting the return which the staff consultants would recommend, we are led to examine the adequacy of a net operating income amounting to $1,696,926.

This would provide a return on system rate base of about 6.88% The return on capitalization of Transit as of May 31, 1969, would be 7.91% (on long-term debt and stockholders' equity per Staff Exhibit No. 11).

The net income available to equity as of May 31, 1969, would be 38.54%. This figure, looked at in isolation, appears high. However, we are mindful of the fact that the losses which the company has suffered in the past few years have reduced retained earnings considerably. The return on equity must be considered in light of this fact. If we simply reduced the dollar return by dint of the percentage return on equity, the company's losses would place it in an ever downward spiral. As previously mentioned, we think that the company is now in serious need for growth in its internally generated capital. Hence, we believe that the return on equity is reasonable.

This level of return must also be measured by the criteria set forth by the court of appeals. As previously noted, the company will pay interest expense of $1,196,926 out of a total return of $1,696,926, which would leave $500,000 as a return for the equity holder. This amount must be adequate "to pay dividends sufficient to attract investors, and retain a sufficient surplus to permit it to finance new equipment and generally to provide both the form and substance of financial strength and stability." D. C. Transit System, Inc. v. WMATC, 350 F2d 753,778 (D. C. Cir. 1965). In our judgment, these standards would be met. A return of $500,000 would permit the payment of dividends at a level consistent with current stockholder equity if management so decided. We suspect, however, that, for the time being, management will choose to emphasize the need for retained earnings in order to build up equity and improve cash working capital. These choices are within the province of management. We are sure that the amount we are considering would not be excessive by any standard and would be adequate in terms of the company's overall financial needs and the present level of its equity capital. Retained earnings have reached a very low level. While earnings at the level under consideration would permit a substantial growth in present levels when considered in percentage terms, the dollar growth is modest.

The return would be adequate to finance new equipment. We have eased the requirements for such purchases and the amount here discussed would reduce the amount allowed for such purposes accordingly. See pp. 19-20, supra.

To sum up on the subject of return, we have in this record the testimony of Mr. Curtin advocating a net operating income of $2,700,000. For reasons discussed not only in this order but on two earlier occasions we do not rely on Mr. Curtin's analysis. We also have the testimony of Messrs. Banks and Dutton. By a novel and critical method of reasoning, they have reached a conclusion as to the amount of return which we should allow which is substantially similar to the conclusions we have reached in three relatively recent opinions.[9/] We have examined that level of return in light of current conditions as revealed in this record. We find that a downward adjustment in the levels earlier allowed is justified by our easing of the bus purchase requirement. With this adjustment, application of the standards and criteria set forth by the court of appeals leads to the conclusion that a return consistent with our allowance in earlier cases and with the recommendations of staff consultants in this proceeding is a just and reasonable return. Accordingly, we will allow a net operating income of about $1,700,000.

9/ We emphasize our understanding that we are looking, at the moment, only at the amount of return which the staff consultants would allow. The special treatment of that return which they recommend is another matter, but it has no immediate effect on the amount of money which must be produced through the fare box.

Before leaving this subject, we wish to point out that the thrust of our analysis of the staff consultants' recommendation has been to its end result. In reaching that result, the consultants espoused theories and views rarely heard in considering proper levels of return. They suggested that Transit needed no further return on equity because of its "impermanence," its prior earnings, and its declining patronage.

To us, the significant thing about the consultants' approach is that it led them to the same conclusions with regard to amount of return as has been reached by other analysts in other proceedings. We do not adopt their philosophy and views although we find them interesting and provocative. We believe that an incisive yet unconventional approach to this problem of rate of return determination, such as that provided us here by Messrs. Dutton and Banks, is extremely useful in enlightening a commission's perceptions of this extremely complex area. We have some doubts, however, as to the wisdom of the adoption of a policy along these lines by a regulatory commission. We believe that it would have adverse effects along two important lines. First, it would seriously damage the confidence of the financial community in this company and thus impair the company's ability to obtain further financing. Second, it would seriously impair the incentive of ownership and management to provide an adequate, much less a high quality of service.

For all these reasons, we rely only on the significant fact that their severely critical analysis led them to a conclusion consistent with our past determinations as to the proper level of return.

Having made this determination, we are in a position to reach some preliminary conclusions on revenue requirements. Table II, p.12, supra, indicates that in the future annual period under present fares, the company will incur an operating loss of $ 176,197. We must change fares sufficiently to make up this operating loss, to cover interest expense of $1,196,926 and to provide a return on equity of around $500,000. Thus, we must provide additional revenues in the future annual period of about $1,870,000, so that operating revenues in that period will total about $41,100,000.

D. Revenues and Expenses -- Under Fares Proposed by Applicant

We first consider the projected operating results under the fare schedule proposed by applicant. The company, in its Exhibit No. 26, had assumed that one-half of intra-D.C. passengers would use the 32¢ token and the other half would pay the straight 35¢ fare proposed by applicant. The Commission might have accepted such a forecast if tokens were available for sale on the buses, but, because of the exact-fare system now in effect, it is obvious that substantially less than 50% of D. C. passengers will be able conveniently to purchase tokens. Staff Exhibit No. 1 showed the serious decline in token outlets from 382 in September 1968, to only 205 by June 1969, including a bare 4 outlets in all of Southwest Washington, 7 in Northeast, and 8 in the Southeast section of the city. The staff estimated that no more than 40% of D. C. passengers would be able to buy tokens. Based on that percentage, the following statement projects operating results for the future annual period, based on an assumption of a 60/40 cash token split, the remaining figures being those developed for Table II:

TABLE III

OPERATING STATEMENT FOR FUTURE ANNUAL PERIOD
AT FARES PROPOSED BY APPLICANT
(USING 60-40 CASH-TOKEN SPLIT)

Revenues			
Passenger		$38,493,888 10/	
Schoolfare Subsidy		1,657,766	
Charter		2,000,932	
Government		123,784	
Other		189,333	
		$42,465,703	
Operating Revenue Deductions			
Operating Expenses	$35,873,955		
Taxes, excluding income taxes	1,254,681		
Income Taxes	120,844		
Depreciation	2,351,080		
Acquisition Adjustment	(173,339)		
		$39,427,221	
Net Operating Income		$ 3,038,482	(7.16%)
Interest		(1,196,926)	
Net Income		$ 1,841,556	

The resulting net operating income of $3,038,482 is excessive. The return on equity would be more than three times that we have found to be just and reasonable. An excessive result is also reached if the revenues are recalculated on the basis of a 50-50 cash-token split, as the company originally proposed. The return on that assumption would total $2,791,947, and the return on equity would be $1,595,021.

The Commission's task now is to find a suitable rate structure which will produce net operating income of approximately $1,700,000 so that return to the equity holders, after interest expense, nets out to about $500,000. Before reaching that question, however, we believe that this is the appropriate point at which to consider the question whether, despite the conclusions we have reached in considering projected revenues and expenses, we should simply deny any relief whatsoever.

10/ This figure contains a deduction of $10,300 for the Rockville zone adjustment. See p. 39, *infra*. In addition, following our past practice, we have disallowed an adjustment of $44,808 suggested by Transit on the basis that there are a substantial number of tokens outstanding which were sold for a price less than the 32-cent value for which they may now be used. We have made the same adjustment in the revenue figures used in Table IV, and the tables in footnotes 13 and 14.

III

EFFECT OF PENDING LEGISLATION

To review our conclusions briefly, the company sustained an operating loss of $25,950 and a loss including interest payments of $1,312,937 in the twelve months ending February 28, 1969. If fares are maintained at their present levels, the company will sustain an operating loss of $176,197 in the twelve months ending June 30, 1970. They will, in addition, have to pay interest expense of $1,196,926 in the same period, making a total loss of $1,373,123.

In the ordinary case, there would be nothing further to discuss on the subject of a need for action with regard to fares. The existence of the need would be obvious and the only further inquiry would concern the precise nature of the action to be taken. However, in this proceeding further questions as to the need for action have been raised and these questions merit our careful consideration.

The issue was most squarely presented to us by the testimony of the Honorable Walter E. Washington, Mayor-Commissioner of the District of Columbia. The District Government had entered the proceedings as a formal protestant and their direct case consisted of Mayor Washington's testimony.

The Mayor stated his concern -- a concern which closely parallels our own views expressed a year ago at pp. 3-18 of our Order No. 880 -- with the adverse impact upon social costs and sound transportation planning of further increases in transit fares. He pointed out that there is legislation pending in Congress which is addressed to this problem, specifically a bill authorizing public ownership of the transit system and providing for financial assistance to the company from public funds during the interim period while transfer to public ownership is being arranged. Because of the problems which fare increases cause, and because this legislation is pending in Congress, the Mayor urged us to deny the pending application for a fare increase.

We must, of course, evaluate the position the Mayor urges within the framework of the obligations imposed upon us by law and in the light of the responsibilities we bear for the health of the mass transit system which serves this community. Having thus considered the suggested course of action, we have reluctantly concluded that it is not a path down which we can go.

First, we do not think it is legally possible for us to do so. We have no control over the timing of an application for a rate increase. Transit may file such an application at any time that management desires. Once an application is filed, we have no power to delay our decision beyond 150 days from the date on which the application was filed. We have a statutory obligation to act within that time period. Otherwise, the fares proposed by the applicant automatically go into effect. When we do make our decision, we do not have unbridled power to make any disposition of the application which we see fit. Our decision must be based on a consideration of the facts of record and on an application to those facts of the standards set out in the Compact and in the applicable case law. Hence, in the present proceeding, we must issue a decision by October 26, 1969. We must grant or deny that application on the basis of the facts presented to us and the provisions of the Compact and the applicable cases.

We know of nothing in either the Compact or the cases which would empower us to deny a rate increase when it has been shown as it has in this record, that the present fares will not even cover the company's operating expenses during the future annual period. The Compact explicitly requires not only that the company receive revenues sufficient to cover expenses but that it "be afforded the opportunity of earning such return as to make the carriers attractive investments to private investors." Compact, Ariticle XII, Section 6(a)(4). Apart from this statutory provision, it is a basic principle of regulatory law that a utility may not be required to operate at a loss. To do so is to confiscate its property without due process of law. Bluefield Water Works and Improvements Co. v. West Virginia Public Service Commission, 262 U.S. 679, 690 (1923). These provisions of law are binding upon us and we have no right to ignore them.

It is suggested, both in the Mayor's testimony and in the arguments of other protestants (most clearly and ably by Mrs. Wald of Neighborhood Legal Services, representing the Citywide Welfare Rights Organization) that we can somehow avoid the requirements of Section 6(a)(4) of the Compact because of the provisions of Section 6(a)(3). That section reads as follows:

> "In the exercise of its power to prescribe just and reasonable fares and regulations and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service."

We have considered this language carefully in this proceeding just as we have considered it in every past rate case. First, we think that this language must be read with Section 6(a)(4) to form a harmonious whole. Section 6(a)(4) imposes a flat, unequivocal obligation to cover expenses plus a fair return. There is nothing in Section 6(a)(3) which relieves us of that obligation on the basis of this record. Rather, it states that, in setting just and reasonable fares, we must give "due consideration" to certain factors.

Two of these factors themselves explicitly recognize the obligation to provide adequate revenues. Thus, we are to consider "the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service." Compact, Article XII, Section 6(a)(3). Our attention is thus specifically directed to the concept that we must provide revenues sufficient to enable the carrier to provide service. Operations at a loss will certainly not meet that standard.

It is suggested that this language somehow enables us to control the timing of an increase even though the evidence shows that loss operations will result. We see no merit in such a claim. For one thing, it must be borne in mind that if we deny this application, and the company wishes to seek another increase, it would have to file a new application in order to obtain an increase. All interested parties have full rights to participate in the new proceeding which would thus be started. These proceedings involve complex issues. Hence, a further period of 150 days, or five months, could well ensue before further action on fares was possible. Hence, losses could occur for a very substantial period if we accepted this theory. Such a result would not be consistent with the furnishing of service.

Moreover, even if we could control the timing of an increase on the basis of this language, it is a dubious proposition that we should delay at this time. The company operated at a substantial loss in 1967 and at an even greater loss in 1968. In 1969 to date, by our explicit order, its fare box revenues were sufficient only to permit it to operate at a break-even level. Faced now with the fact that further losses would result if fares are not increased, it is difficult to accept the proposition that this is an appropriate time for delay, if that were within our power.

The next clause of Section 6(a)(3) directs our attention to "the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service." Here is a direct admonition to provide revenues sufficient to cover expenses. No management can provide satisfactory service for long if it is losing money on its operations.

Recognizing this, the thrust of the argument made under this language is that Transit's management is not honest, economical, and efficient and that if it were, the revenues under present fares would be sufficient. However, there are no facts of record to support these contentions. We have discussed certain management deficiencies in this opinion and we will direct that certain changes be made. But these problems relate only to improving the company's performance with respect to vehicle maintenance and scheduled service and neither our staff nor the protestants have presented facts indicating that the company's basic problems lie in inadequate management.

Indeed, it is crystal clear on this record that the financial problem of the company is due to a declining ridership trend and increasing labor costs. Much of the decline in ridership, it has been indicated, is due to conditions over which the company has no control whatever, namely, unrest in the city and the necessity for instituting a scrip system due to an enormous increase in bus robberies. The increasing labor costs stem from a cost-of-living clause in the labor contract which has had a heavy impact due to the steep inflation of recent years. We can find no basis in this record for saying that the need for additional revenues could be taken care of by a more honest, economical, and efficient management.

The third standard which Section 6(a)(3) requires us to consider is "the effect of rates upon the movement of traffic by the carrier. . . for which the rates are prescribed." It is pointed out that a fare increase causes a decrease in ridership, thus adversely affecting the "movement of traffic by the carrier." Hence, it is argued, application of this standard requires us to deny an increase. However, if this reasoning were valid, no increase in fares could ever be justified since they always cause some persons to stop riding the bus. We believe, rather, that this standard is addressed to the proper design of a rate structure and that it inherently recognizes the need for revenues sufficient to cover expenses.[11/] In this connection, the Citywide Welfare Rights Organization suggests that, under this standard, the company has been deficient in failing to give a discounted rate in the off-peak hours, thus increasing ridership. However, this contention overlooks the fact that this Commission has, in the recent past, considered the subject of discount fares, both as a general measure to increase ridership and as a desirable alternative for off-peak hours. See Orders Nos. 880 and 882.

For reasons fully discussed at pp. 15-18 of Order No. 880, issued October 18, 1968, we do not believe that a straight reduction in fares at all times, in the hope of increasing ridership, is a practicable solution to Transit's problems. There is no reasonable basis on which to expect an increase in ridership of sufficient magnitude that overall revenues would be increased.

11/ Without such rates, there would eventually be no "movement of traffic" at all.

As for fare reductions in off-peak hours, we considered that possibility in Order No. 882. It is an approach with some merit and we may yet take an opportunity to test it. However, our analysis of the conditions existing on this transit system at the time we considered the idea indicated that if such discounts were instituted, the peak-hour fare would have to be higher than it would with a straight fare applicable at all times. It further appeared that more people would be paying the peak-hour fare than the lower fare. In those circumstances, we judged that use of such a fare was not desirable. This is not to say that the matter should not be further considered as conditions change. If we were to have a basis for concluding that such a rate structure would be beneficial, we would try it out.12/ However, there is no basis in this record for concluding that such a structure would be desirable. In any event, it certainly cannot be said that the company's failure to institute such a system justified a denial of a fare increase at this time.

Under §6(a)(3) we must give due consideration, finally, "to the inherent advantages of transportation by such carriers" as Transit. Again, we find nothing in this standard which would justify this Commission in refusing to give Transit a rate structure which produces revenues sufficient to cover expenses. The inherent advantages of mass transit cannot be enjoyed long by anyone if the system is not allowed to be economically viable.

To sum up on the impact of §6(a)(3) of the Compact upon our consideration of the issues before us, we have pointed out the obligation imposed directly upon us by the unequivocal language of §6(a)(4) to provide revenues sufficient to cover expenses and provide a fair return. We then referred to the general principle of statutory construction that the various sections of a statute must be read and interpreted to form a harmonious whole. We then examined in detail each of the standards set out in Section 6(a)(3) and we find nothing in any of them which would justify us in overlooking the requirements of §6(a)(4) and making the company operate at a loss. We conclude, therefore, that in view of the facts of record here, we have no basis in the applicable law for adopting the Mayor's suggestion that we refuse an increase because of the pendency before Congress of legislation providing for public ownership and interim subsidy.

12/ We know that it has been tried in other cities and has not been considered a success.

The argument to the contrary comes down to this: Pointing to the standards of §6(a)(3) and to the recognized fact that rate increases lead to decreased ridership, it is argued that such increases should only be granted if there is no other reasonable alternative. This is a proposition with which we fully agree. In this case, as in all others, we would not grant an increase if there were a reasonable alternative course of action open to us.

Our attention is directed in this connection to the alternatives of public ownership and interim subsidy in legislation presently pending before Congress. This, it is said, is an alternative and "due consideration" of it requires that we deny any increase at this time. We should turn, therefore, to a direct consideration of this alternative.

One flaw in this reasoning is the fact that the legislation is not an alternative at the moment. Rather, it is a possibility that may or may not come to pass. From a legal standpoint, it would be a questionable course of action to rely on this possibility. We must act now -- the statute requires us to. If the facts of record justify an increase now we may not deny that result simply because something might occur in the future which would avoid the existing need.

Of course, the more certain it is that circumstances will change, the stronger becomes the argument that we should take the possibility into account. In our judgment, however, the pending legislation can only be regarded as a possibility with no degree of certainty at this juncture. While bills have been introduced in both Houses of Congress, they have not reached the floor in either House. In the Senate, the public ownership with interim subsidy bill has been approved in Committee but it has not yet been reported to the floor. In the House, there have not even been hearings on the ownership proposal. We have no information, nor did the District Government in its testimony before us, as to the ultimate prospects for this legislation in either House. We certainly have no basis whatever for basing any action on the assumption that the proposals will be enacted into law.

Finally, in considering the suggestion that we simply withhold action at this time on the basis of pending legislation, we feel that we must take into account the company's present ability to continue operations in the face of operating losses. We have many obligations which the public interest requires us to protect. There is none more important, however, than our obligation to ensure that this community has available to it the mass transit service on which it depends so heavily. The problems stemming from service deficiencies, and the problems stemming from higher fares, are as nothing compared to the problems with which we would have to deal if the buses simply stopped running.

Nor is this a remote and imaginative possibility. The rate of return witnesses engaged by our staff in this proceeding can hardly be considered as unduly favorably disposed toward the financial interests of the company's owners. They recommended a severe new approach toward rate of return determination. Yet each was asked about the possibility of simply requiring the company to operate at a loss and each rejected that possibility as highly unrealistic and potentially dangerous. Each referred to the recent experience of the city of Akron, Ohio. There, as we understand it, an operator was denied an increase and required to operate at a loss. The company's buses were seized by creditors and the operation was shut down. The city was deprived of transit service for more than four months. We cannot countenance any such similar experience here in the Washington area.

Of course, a company could be in a state of financial health which permitted it to sustain loss operations for some period of time. However, the facts here demonstrate that we have no such situation. This company has already sustained substantial losses in 1967 and 1968. It is operating only at a break-even level in 1969. Its current liabilities are 5.9 times in excess of its current assets. A company witness presented an analysis of cash flow. On the basis, thereof, the company witness made dire predictions that operations would simply have to cease very shortly without financial relief. We need not accept his conclusions and, indeed, we do not, as to the timing of the impact on the company for further loss operations. Nonetheless, we think that the information on cash flow makes it clear that requiring the company to sustain further losses involves an unacceptable degree of risk to continuity of service.

We also accept the validity of the contention that further losses would make it difficult, if not impossible, for the company to rely on outside financing sources in order to weather a period of financial losses.

In short, we have considered the Mayor's suggestion that we refuse any further fare increases despite a showing of financial need. We reject, as did the Mayor, the alternatives of reductions in wage rates or cut-backs in service levels. We must also reject, albeit reluctantly, his suggestion that we simply withhold action on the basis of the public ownership legislation pending in Congress. We do not think that such a course of action is legally open to us. Even if it were, we do not think that eventual enactment of that legislation is sufficiently certain to justify our reliance on that result. Finally, we think that to withhold action in the face of the financial realities we have here found to exist involves an unacceptable degree of risk to the assured continuity of transit service.

This is not to say, however, that our actions in this proceeding have not been influenced by the Mayor's testimony and by the issues he raised. In response to a very legitimate concern with the social impact of rising fares, we have taken whatever steps we can to keep those increases to a minimum level. Most importantly, we have, for the time being, eased the requirement that the company remain on a rigid annual bus purchase program, thus reducing required annual revenues by $ 769,170. See pp.43-44, infra.

Moreover, in the exercise of our judgment in those areas where such exercise is proper, we have opted for those actions which will minimize the amount of increase. For instance, we feel that a thoroughly defensible case could have been made for giving Transit a fare increase much closer to the level it sought, i.e., a 35¢ cash fare and a 32¢ token fare. This company has just come through a period of severe financial adversity. In two consecutive years, it has lost substantial sums; it is currently just breaking even. It faces problems with its creditors and has even at times had difficulty meeting its payroll. For a time, there was a threat of a work stoppage because of a dispute about arrearage in its payments to the union pension and health funds. If the special circumstances with which the Mayor's testimony dealt were not present, it would be a sound exercise of judgment to be a bit generous both in resolving disputes on projected expenses and in determining the proper return. An easing of stringency in these areas would enable the company to recover its financial health fully in a timely manner. However, we have not taken that course. We have applied a strict though fair standard to the resolution of disputes and we have restricted the return to the minimum defensible level. This approach has been taken in direct response to the problems with which both this Commission and the Mayor are concerned.

Finally, we wish to make it crystal clear in this opinion that we stand ready to respond as quickly and as expeditiously as can be done to any final enactment of legislation dealing with the problem of rising fares. If the Congress enacts legislation which permits a fare reduction, and if the President approves it, we will move with the utmost dispatch to reduce fares to whatever level is possible.

In summary, therefore, we have considered the Mayor's testimony fully and carefully. We share his concern with the problems caused by increasing fares and we applaud his efforts to deal with them. However, there are insurmountable obstacles, both legal and practical, to adopting his suggestion that we deny a rate increase completely. Rather, we have kept that increase to the minimum level necessary to preserve the company's financial health. We stand ready to act as quickly as possible to reduce fares as soon as legislation making that feasible becomes effective.

IV

THE APPROPRIATE RATE STRUCTURE

It is clear, therefore, that the pending legislation on ownership and subsidy of Transit does not obviate the need to consider the question of appropriate changes in the rate structure in order to produce the revenues here found to be necessary. We begin our consideration with one more basic question: The impact on our deliberations of the court decision in Payne v. WMATC (D. C. Cir. 20,714, decided October 8, 1968) and our proceedings on remand of that decision.

Pursuant to that remand, we have engaged the services of independent consultants and they have undertaken a thorough investigation of the factors involved in obtaining a "fare structure that is rational, fair, and neither 'unduly preferential [n]or unduly discriminatory;'" Payne, slip opinion, p.37.

The Payne case was remanded to the Commission in December 1968. On December 17, 1968, qualified independent consultants were requested to submit proposals on the fare discrimination study. Fifteen responses were received and analyzed by the staff, in the course of which there was consultation with consultants interested in performing the study. On April 8, 1969, Alan M. Voorhees and Associates, Inc., was retained. Their contract provided that they would complete the study and submit a report within five months. The final report is not yet available, but the Commission staff has received a draft. It is expected that a final report will be submitted to the Commission in the near future. We anticipate holding public hearings within 30 or 40 days after that on the findings of the report as a means of assisting us in reaching the conclusions called for by the Payne remand.

The question which now arises is whether we should make any further adjustments in fares until the Voorhees study, and the proceedings in connection therewith, are completed. We considered this same question in Order No. 880 and we found our answer there, as we do here, in the court's holding in the Payne case. There, the court said:

> "[W]e do not view our holding in this regard as requiring that the rate increases ordered by the Commission be rescinded, and we leave the matter of any immediate fare adjustments to the Commission's discretion. . . . [W]e think the Commission, balancing the possibility of unfairness to particular customers or classes of customers against the company's immediate need for increased revenues, might have deferred consideration of the questions relating to discrimination while granting Transit's request for a fare increase. And we hold that it is within the Commission's discretion to follow that course on remand." Payne v. WMATC, slip opinion, pp. 37-38. [Emphasis supplied]

The study required by the Payne remand has been pressed diligently and very substantial progress has been made. We expect to have the consultant's final report and be ready for hearings in the near future. However, those proceedings cannot be held immediately and they may consume a considerable period when they do occur. Following the hearings, we wish to consider the evidence fully and carefully and render a well-considered opinion. Implementation of any action required might take some further time. In short, we cannot take action on the Payne remand now and we cannot predict with certainty when we can act. We are moving steadily toward action and it will not be an unduly long period before our consideration is complete. Meanwhile, however, we have a record that calls for fare adjustments now. We believe that the court's holding in the Payne case, as quoted above, permits us to take further action at this time.

Certain broad questions as to rate structure were raised in this proceeding, and before discussing the specific changes we will authorize by this order, these questions should be considered.

There is, first, the question of the interrelationship between fare levels in the District of Columbia and those in Maryland. We believe that detailed consideration of this problem should await completion of the Voorhees study. Meanwhile, we will maintain approximately the same relationship between those fare levels as exists at the present time. We believe that this action is justified, for the time being, by the evidence of record in this proceeding. Transit introduced a cost allocation study which indicated that, while the percentage of costs borne by the Maryland riders was not quite as high as in the District of Columbia, the difference between the two was not so high as to be considered unreasonable. Thus, for the twelve months ended February 28, 1969, the study indicated that the company had lost $251,381 on its District operations and $92,410 on its Maryland operations. We are not endorsing this study. We will make no conclusions on this cost allocation issue until we have developed a record in the Payne remand. However, the company study was subjected to cross-examination and we do not find it to be patently unacceptable. It provides a reasonable basis on this record for us to maintain a similar relationship between Maryland and D. C. revenues for the remaining period until the Payne remand proceedings are complete.

Apart from the general division of revenues and expenses between Maryland and the District of Columbia, questions were also raised as to the appropriateness of Transit's fare zones. This is an area which can be examined in depth in connection with the study undertaken as a result of the Payne case. The width of fare zones, and whether they should be bounded at the District line, or some distance inside or outside of it, are proper questions for Commission inquiry, but they can best be studied in the context of the complete review of Transit's zone system which will be possible following completion of the Voorhees study. Accordingly, we believe that we should await the outcome of the Voorhees study and the Payne remand proceedings before we make any attempt to review Transit's present system of fare zones.

There was also testimony on the possibility of having the District of Columbia itself made into more than one fare zone. Mr. Butler testified for the company on some of the difficulties involved. He stated that Washington has corridors of dense population rather than a large core, and that zoning in an attempt to provide less expensive transportation for poor inner-city residents may well be impossible due to the scattered location of the city's poverty pockets.

Protestant Citywide Welfare Rights Organization introduced maps purporting to show concentrations of poor residents, but testimony by staff Urban Transit Planner Kinbar was to the effect that trips in the District of Columbia are of varying patterns, with few inside-core trips, and that the construction of inner-city zones would be likely to exacerbate inequities, while providing no real saving to the poor as a class. He also detailed the problems resulting from the institution of a more sophisticated collection system that would be necessitated by a new fare structure. He concluded that a sub-zone system for the District of Columbia is economically and socially undesirable.

We find no basis in this record for instituting fare zones within the District of Columbia.

Another basic question on rate structure which is raised on this record is whether to provide a price differential for token fares.

Transit's application proposed a fare of 35 cents cash, or 5 tokens for $1.60, that is 32 cents per token for rides within the District of Columbia. For most of the recent past rate history of Transit, some fare differential favoring the purchase of groups of tokens has been in effect.

The company seeks the return of the practice of giving a discount to token users because it believes that the practice benefits regular riders and is an incentive to travel by bus on a regular basis.

The staff opposed such a price differential because it questioned its feasibility. With the institution of the exact-fare system in 1968, it was no longer possible to purchase tokens on the bus. The company, with cooperation from civic organizations and many commercial establishments, set up token sales outlets at 382 locations by September 12, 1968. With the passage of time, however, the number has declined, apparently due to a disinclination of private stores and business concerns to sell tokens as a public service. As of June 16, 1968, only 205 token sales outlets were operating, with over half of these being in government offices.

A discount would be discriminatory if it were unavailable to large numbers of riders only because of a poor distribution system. Objections can also be raised to the requirement that tokens be bought in lots of 5, since this has the effect of denying the discount to those who cannot accumulate the $1.60 required for a minimum token purchase. Finally, Transit has failed effectively to meet the argument that allowing use of tokens only on rides originating within the District of Columbia, discriminates against the Maryland riders.

Transit stated that if a cash/token differential were put into effect, it would make every effort to increase the number of its outlets, but the company conceded that it would be more difficult to obtain new outlets in light of the experiences of those who have sold tokens during the past year. Mr. Butler, Transit's Senior Vice President, stated that no plans for expanding distribution have been made.

The staff report concluded that a discount would increase the public's interest in the use of tokens considerably, and logic supports this conclusion, but existing means of distributing tokens appear at the very least to be inadequate to meet the demand that a price differential would engender.

We are not persuaded by Transit's reasoning in justification of a cash/token differential as an incentive to regular ridership, particularly as Transit, in a recent fare case, proposed elimination of the token altogether. In any event, until a method is developed to ensure wide distribution of tokens so as to obviate the discrimination which would be worked upon those who do not have ready access to one of the limited number of token outlets now in existence, we cannot allow them to be sold at a discount. Hence, in our consideration of appropriate fare changes, we will concentrate on examining the impact of fare increases of equal amounts in both the cash and token category.

With these general questions disposed of, we can turn to a consideration of the specific changes in fares required to produce the revenues required by our conclusions herein. As in the past, our guiding principle will be to spread the burden of producing needed additional revenue equitably over all classes of riders.

As a starting point to test the level of increase required, we have computed the results which would occur with a three cent increase in intra-District, intra-Maryland, and all interstate trips, and a five cent increase in the Capitol Hill Express, with other categories unchanged. We find that this would produce a net operating income of $2,313,250, and net income to the equity holders, after interest, of $1,116,324. 13/ This is more than twice the return to equity we have found to be proper and we could not approve such a result.

We next computed the results which would occur with a two cent increase in intra-District, intra-Maryland, and all interstate trips, and a five cent increase in the Capitol Hill Express, with other categories unchanged. This would produce a net operating income of $1,541,984 and a return to the equity holder of $345,058. 14/ This

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13/ A condensed operating statement under these fares is as follows:

Operating Revenues:	
Passenger	$37,647,011
All Other	4,047,168
Total	$41,694,179
Operating Revenue Deductions	39,380,929
Net Operating Income	$ 2,313,250
Rate of Return	5.55%

14/ A condensed operating statement under these fares is as follows:

Operating Revenues:	
Passenger	$36,901,869
All Other	3,971,815
Total	$40,873,684
Operating Revenue Deductions	39,331,700
Net Operating Income	$ 1,541,984
Rate of Return	3.77%

margin is below the level we believe to be acceptable by any standard.

Hence, we must establish a fare structure which is somewhat above a general two cent increase and somewhat below a general three-cent increase.

We will provide a two cent increase in intra-District fares and, pursuing our recent policy in this regard, will also have the same fare in the first two zones of Maryland intrastate service. There is one category of service in which we think a higher increase can equitably be required. This is the interstate express service. These buses provide a high quality of service to suburban residents. They run non-stop through outlying areas of the District to downtown locations, passing patrons awaiting service on local buses. They serve primarily those en route to and from work. There is an alternative category of bus service available at a lower fare, i.e., the interstate local service. The actual amounts of these fares are higher than many other fares. Hence, a higher increase in terms of cents is not much higher in terms of percentages. In consideration of all these factors, we have determined that a five-cent increase in the interstate express fare is fully justified. 15/

Thus, an increase of two cents in intra-District, intra-Maryland, and interstate local service, with a five cent increase in interstate express and Capitol Hill Express, and no changes in other categories, will produce the following results:

15/ The company had proposed that this category be increased by 10 cents. We have rejected this proposal as too large in relation to the other increases authorized.

TABLE IV

PROJECTED OPERATING STATEMENT FOR THE FUTURE
AT FARES PRESCRIBED BY THE COMMISSION

Operating Revenues:		
Passenger		$36,953,311
Schoolfare Subsidy		1,657,766
Charter		2,000,932
Government Contract		123,784
Other		189,333
Total		$40,925,126
Operating Revenue Deductions		
Operating Expenses	$35,873,955	
Taxes (excluding income taxes)	1,254,681	
Income Taxes	28,409	
Depreciation	2,351,080	
Acquisition Adjustment	(173,339)	
Total		39,334,786
Net Operating Income		$ 1,590,340
Operating Ratio		3.89%

The result under this fare structure is a net operating income of $1,590,340 and a return to the equity holders of $393,414. For reasons which we will now discuss, we think that it is an acceptable operating result.

The figures with which we are dealing here are all projections, and, while they represent our best judgment at this time, we are aware that actual results may vary from our estimates. For instance, we have accepted the company's estimate for charter revenues. There is always the chance that the higher estimate of the staff will prevail, in which case, after adjusting for the additional operating costs involved in producing the extra charter revenues, there would be a net benefit to the company of some $62,000.

There are other areas of some elasticity in our projections. The basic passenger revenue figure of $36,953,311 is constructed from passenger volume forecasts of the company, which are somewhat lower than those forecast by the staff. Although we felt that the company's forecast was superior statistically, if late year trends continue, the more optimistic prognostication by the staff may materialize, in which case additional revenues as high as $148,000 might be generated. Also, the passenger revenue figure we have used above excluded the amount of $10,300 for possible loss of fare box income due to adjustment of the Rockville zones. This is admittedly a very rough figure, and may be entirely too high.

Thus, we see the possibility of net operating income exceeding the $1,590,340 projected in Table IV by as much as $220,000 during the future annual period.

We have found that a fair return in this case would provide a net operating income of about $1,700,000, and after providing for the amount of interest expense forecast by the company, would leave approximately $500,000 for the use of the equity holders. The fare structure utilized in the table now being discussed produces only $393,414. But to the extent that some or all of the unresolved factors come into play, such as additional charter work and an upward trend in passenger volume, there is, in our opinion, a fair likelihood that the $500,000 level will be reached.

If this level is not attained during the 12-month period ending October 31, 1970, the credit in the court-ordered reserve established by Order No. 981 is available to offset the deficit. The company may report to the Commission, as soon as possible after October 31, 1970, the net operating income it will have experienced for the 12 months then ending. To the extent that the net operating income is less than $1,700,000, they may apply for permission to remove from the riders' reserve and place in the retained earnings account of the company, an amount sufficient to bring the net operating income of the company for that period up to $1,700,000, such credit to retained earnings not to exceed $138,304. 16/

Table V below sets out the effect of the new fare schedules in terms of contribution to total passenger revenues by the three major segments of transit passengers.

16/ Set up by WMATC Order No. 981, served October 17, 1969. The credit balance stands at $138,304.

TABLE V

D. C. TRANSIT SYSTEM, INC.
D.C./MARYLAND REVENUES
CONTRIBUTION TO TOTAL REVENUES

	Future Annual Period At Present Fares	%	Future Annual Period At Authorized Fares	%
Intra-D.C. (1)	$30,217,732	82.05	$31,729,846	82.18
Intra-Maryland	2,530,180	6.87	2,633,245	6.82
Interstate	4,081,719	11.08	4,247,986	11.00
Total (1)	$36,829,631	100.00%	$38,611,077	100.00%
(1) Includes School Fare Subsidy	$ 1,507,060	4.09%	$ 1,657,766	4.29%

The relative contributions by each of the segments continues in the same balance as in recent history.

We believe, therefore, that a just and reasonable fare structure would be maintained if we make the following changes in fares:

1. D. C. cash fare raised from 30¢ to 32¢

2. Tokens raised from 30¢ (4 for $1.20) to 32¢ (5 for $1.60)

3. Interline fare raised 2¢

4. Maryland intrastate fares raised 2¢ in all zones (32¢, with increments as before, to 92¢)

5. Interstate local service fares raised 2¢ in all zones (47¢, with increments as before, to $1.17)

6. Interstate express service fares raised 5¢ in all zones (50¢, with increments as before, to $1.30)

Two further aspects of this fare structure should be touched upon. First, Transit sought to raise the fare on the D. C. Downtowner (minibus) from 10 cents to 15 cents. Mr. Butler testified that "in view of a 35 cent standard fare, the 15 cent or 20 cent minibus fare is not out of line." (Tr.123) He stated that he felt that the service cut into regular route patronage, but he would not categorically label it a losing proposition.

Mr. Overhouse did testify that the service operated slightly below the breakeven point, but that, due to the nature of the service, any reductions in service or increases in fares would destroy the attractiveness of it as a shoppers' shuttle, and might render it a complete failure. He further alleged that inefficient scheduling and poor supervision had inflated the costs of the service and depressed its patronage, and that the Commission staff was in the middle of an investigation of how improvements could be effected.

It appears that minibuses are not as sturdy as regular route vehicles, so the cost per mile for their maintenance is higher than the average for the company. This factor is in part balanced, however, by the fact that there is no longer a depreciation expense for the minibuses, which have been fully depreciated.

Having studied the data relating to this service, we are convinced that raising its fare as proposed would lead to its eventual demise. Value-of-service is a valid concept by which to judge fares and, in our judgment, the shuttle type of service, with very brief rides, which the minibus provides, would not be adequately patronized with a 15 cent fare. The service is close to breaking even. The staff has improvements under study. We think that the wisest course at this time is to maintain the fare at 10 cents.

An important rate structure question was raised by the City of Rockville. It presented exhibits which show that the fare zones within their city limits are substantially smaller than the average zone in Maryland. This means that the cost per mile of going from one side of Rockville to the other is unreasonably greater than a random ride of the same distance. Public transportation should not discourage travel within a political subdivision by imposing inordinately high fares, as appears to be the situation in Rockville. The city contains three full zones and part of a fourth within its corporate limits. This is a specific problem which can, and should, be alleviated prior to our overall rate structure study. Therefore, we directed our staff to propose a salutory and more equitable structure for fare zones within Rockville.

The staff recommended approval of the proposal made by the City of Rockville itself and this result appears just and reasonable to us. Thus, the boundary between zones 6 and 7, now located at New Street, where it crosses Rockville Pike and Viers Mill Road, will be relocated to the intersection of Washington Street and Montgomery Avenue. Further, we will eliminate the line separating zones 7 and 8 which is located at the Rockville Plaza Motel. As a net result, there will be two fare zones within the City of Rockville, as well as a small portion of a third zone at the south city line on Wisconsin Avenue. This change would make the average zone length within the City of Rockville approximately 2.2 miles, which is comparable to the average zone length of approximately 2.1 miles within D. C. Transit's Maryland zone structure. We find that this recommendation will rectify the inequity of the fare zone structure in Rockville without serious detriment to operating revenues. 17/ Passenger revenue figures have been computed on the basis of this change.

Rockville also requested that some alterations be made in the routes and schedules of lines which serve it, in order to have more frequent bus service going through more residential areas. The efficacy of this type of change requires interpretation of local ridership and revenue figures which have not been put before us. As a consequence, we make no finding on this question, but we will expect the company to investigate this matter fully.

17/ Upon review of the Maryland fare zone survey conducted by D. C Transit on Wednesday, April 16, 1969, the basis for D. C. Transit System Inc.'s Exhibit No. 20, it appears unlikely that the company will lose as much as $10,300 per year because of this restructuring of the zones.

V

OTHER ISSUES

There were certain other questions raised in this proceeding which have not been discussed in the course of the foregoing analysis but which nonetheless merit our careful attention. The first involves the company's bus purchase program.

A. Bus Purchase Program

On February 3, 1969, Transit filed Application No. 553, seeking a suspension until further notice of the program requiring it to purchase new buses each year. Inasmuch as this request affected not only the standard of service of the carrier, but also its general financial condition, we made it a part of this proceeding by Order No. 968.

Transit's application for suspension of the program of new bus purchases established in Order No. 773 is based on two arguments: that the company's present equipment is satisfactory, and that the cost of buying new buses seriously weakens its financial structure.

As of June 30, 1969, Transit owned 1,187 buses with an average age of 8.24 years. 76.5% of this fleet was equipped with air-conditioning.

It is difficult to determine whether the size of Transit's fleet is adequate to meet its needs due to the large number of buses presently crippled, a matter which we have discussed in more detail at another point in this order. Transit certainly has not shown that it has a surplus of vehicles, and it is probable therefore, that the average age of its buses will increase if it is not required to carry out a program of replacement. Staff Exhibit No. 1 contains several appendices which clearly show the added maintenance cost involved in operating older buses. Further, the failure to replace buses means that equipment deterioration will result in less attractive facilities for the public.

Transit's financial arguments are more compelling however. The company contends that even if bus purchases would be beneficial, it simply cannot afford to make any at this time. While not accepting this contention, we are acutely aware that requiring substantial bus purchases adds substantially to the revenues which we must provide the company through the fare box.

Thus, a requirement that 85 new buses be purchased annually would increase the revenue requirement in the future annual period by the following amounts:

(1)	Interest Expense	$ 179,069
(2)	Depreciation Expense	203,417
(3)	Increased Return on Equity	386,684
	TOTAL	$ 769,170

In light of the issues raised by Mayor Washington and others, as to the adverse impact of fare increases and the possibility of a public takeover, we feel that at this time the reasons for keeping the fare as low as possible outweigh the improved service considerations inherent in the required bus purchase program. Therefore, we will suspend the bus purchase requirements for the time being. It should be clearly noted, however, that our action has only the narrow result of relieving the company of the requirement that it purchase a certain number of buses each year. It does not relieve the company of its duty under the Compact to provide adequate service and facilities to the riding public, and should it develop that some new buses are required in order for the company to meet that duty, we expect the company to acquire those buses. We will watch closely to ensure that the company's management acts in a responsible manner in determining the extent to which new buses are required.

B. Service Inadequacies

In order to provide the public with satisfactory service, sufficient capable manpower must be employed and effectively utilized. Yet the adequacy of the levels of personnel presently employed by Transit was questioned in detail by the Commission staff.

The Engineering Department Report (Staff Exhibit 1) details a decline in the number of employees in several important areas. The most striking decline is in the number of shop and garage employees which has fallen from an average of 558 in 1961 to an average of 408 in the first six months of 1969. This classification includes mechanics and the men responsible for repair and maintenance of Transit's buses. Mr. Butler testified that the company has no quota of maintenance personnel it seeks to employ, and that no overall study of the matter had been made because he believed that Transit's present repair force is adequate.

The maintenance problem was pointed up by exhibits taken from weekly reports which Transit files with the Commission, which showed that between spring 1967 and spring 1969, the average number of crippled buses (buses out-of-service for more than five days) rose from 5% of Transit's fleet to 10%. And the most recent four-week period figure submitted covering the weeks prior to August 8, 1969, show 130 buses, or 11% of Transit's fleet crippled. The average percentage of bus air-conditioners non-operative each day in the summer months has also risen from 6.4% in 1967, to 9.6% in 1969.

Although no recent study has been made of how to decrease the number of crippled buses, a night shift was considered when Transit opened its new maintenance facility in 1966, but this was deemed to be too expensive in relation to the benefits it would engender.

That this area is of critical importance becomes most clear when it is examined in light of Transit's schedule requirements. The a.m. peak schedule requires 1,069 vehicles. Transit's fleet consists of 1,187 vehicles, which means that if more than 118 buses are inoperative in any one morning, blocks of runs must be cancelled and no cushion of spare buses will be available to replace those which might break down after starting their run. In the 28-week period ending on August 9, 1969, an average of 35 blocks per week were not operated due to unavailability of a vehicle. In addition, 195 blocks per week were not operated due to unavailability of a driver. This average was in fact lessened by the lower bus requirements existing in the summer months. These are inexcusable figures, and they do not reveal partial blocks lost due to unavailability of replacement buses which may have been needed when buses were unable to complete a scheduled run.

A lack of drivers will also cause missed runs, as the figures above show. The company has finally achieved what it believes to be a satisfactory level of employment of bus operators, that is, more than its self-imposed quota of 1,920. As long as blocks are being consistently cancelled due to "no operator," however, Transit's own quota is patently insufficient.

Perhaps no factor discourages ridership as much as non-reliability.[18/] Patrons must be able to count on buses arriving as scheduled. Fewer buses in the garage and more on the road will have the joint effect of improving service for the rider and increasing fare box revenues for the company.

We expect Transit to operate every schedule. This means that it must improve its maintenance program to the point where all of its operations have buses available, plus spares for last-minute breakdowns. In addition, Transit should have enough drivers to provide all services and, in addition, have a sufficient driver "pool" to cover last-minute driver illnesses and the like. We will not attempt here to prescribe the numbers of buses or drivers needed to accomplish those goals, but will take this occasion to declare that if the vehicle/driver situation is not improved to the point where Transit is operating all of its scheduled services all of the time, we will take direct enforcement action. We also would put Transit on notice that in any future rate case if the level of service is allowed to drop below that required by the Compact, the Commission will consider denying any return to the equity holder so long as that condition exists.

18/ This was repeatedly mentioned at the evening hearings held to receive opinions of the general public.

There has also been a decline in the number of employees in the Research and Development Department. Its Traffic Section, which is responsible for checking the use of existing routes, and exploring possibilities for new routes and extensions, has decreased in size from 35 to 19 men between 1961 and 1969. This reduction caused the staff to charge that although day-to-day work is accomplished, "Transit does not have sufficient personnel to make the necessary checks and studies to properly develop, plan and implement service improvements." (Staff Exhibit No. 1, p. 20.)

Another weakening segment of Transit's employment picture is the category of street supervisors. Since 1961, the number of supervisors has shrunk from 44 to 35. This means that Transit's ability to effect on-the-spot alterations in its scheduled service to cope with unforeseen occurrences has similarly declined.

In respect to both of these categories, we also strongly urge Transit's management to effect improvement, as immediately as possible. Again, we will not attempt to prescribe number of personnel required, but we expect an evaluation by management and a resulting rectification of the employee shortage situation in these two vital areas.

The company will be required to submit regular progress reports concerning its efforts in this area.

The fares we establish today will become effective at 12:01 a.m. on October 26, 1969. The timing is dictated by the expiration of the 150-day period with in which action on the application is required and the fact that the token fare is being changed.

FINDINGS OF FACT

We have stated our findings of fact on the issues in this proceeding in our discussion hereinbefore.

CONCLUSION OF LAW

The Commission concludes as a matter of law:

1. That the present fare structure of applicant is unjust and unreasonable in that it will not produce sufficient revenues in the future to enable the carrier to meet operating expenses and earn a reasonable return.

2. That the fares proposed by applicant would be unjust and unreasonable in that they would produce net operating revenues in excess of a fair return.

3. The Commission under the applicable law, including the Compact, is required to prescribe the lawful fare within 150 days from the date on which an application for a fare revision is filed.

4. That the fares authorized by this order are just and reasonable. They are not unduly preferential nor unduly discriminatory either between riders or sections of the Metropolitan District. They are necessary to enable this carrier, under honest, economical, and efficient management, to provide an adequate and efficient transportation service, and they provide the means whereby this carrier may provide an adequate and efficient transportation service in the lowest cost consistent with the furnishing of such service. They will, moreover, afford this carrier the opportunity of earning that return which we have found is necessary to make it an attractive investment to private investors.

THEREFORE, IT IS ORDERED:

1. That the fares proposed by D. C. Transit System, Inc., in tariff revisions filed May 29, 1969, be, and they are hereby, denied.

2. That D. C. Transit System, Inc., be, and it is hereby authorized to file appropriate revisions to Tariff No. 41 on or before October 24, 1969, to become effective at, or after, 12:01 A.M., October 26, 1969, setting forth fares shown in Appendix attached hereto, and made a part hereof, and as shown below:

(A) D. C. cash fare: thirty-two cents (32¢).

(B) Token fare: thirty-two cents (32¢), five (5) for $1.60. Tokens may be used as equivalent to thirty-two cents (32¢) cash.

(C) Interline ticket or transfer, good for five cents (5¢) reduction in fare to connecting carrier. Interline ticket or transfer will be accepted from connecting carrier, good for a five cents (5¢) reduction in fare. (This involves a two cents (2¢) increase per ride.)

(D) Capitol Hill Express Service: seventy cents (70¢) cash, or a valid D. C. Transit transfer or token plus thirty-eight cents (38¢) cash.

(E) Maryland Intrastate service: thirty-two cents (32¢) cash or token for the first two zones of carriage or any part thereof; fifteen cents (15¢) additional cash for the third zone of carriage, or any part thereof; and five cents (5¢) additional cash for each succeeding zone of carriage, or any part thereof.

(F) Maryland-District of Columbia Interstate Local service: forty-seven cents (47¢) cash or fifteen cents (15¢) cash plus one token for regular route service between the District of Columbia and the first zone of carriage, or any part thereof, in Maryland; ten cents (10¢) additional cash for each of the next three zones of carriage, or any part thereof, in Maryland; five cents (5¢) additional cash for each succeeding zone of carriage, or any part thereof.

(G) Maryland-District of Columbia Interstate Express service: fifty cents (50¢) cash or eighteen cents (18¢) cash plus either a valid D. C. Transit transfer or one token, between the District of Columbia and the Maryland-District of Columbia line; ten cents (10¢) additional cash for each of the first, second, third, or fourth zones of carriage, or any part thereof, in Maryland; and five cents (5¢) additional cash for each succeeding zone of carriage, or any part thereof, in Maryland.

3. That tokens outstanding on October 26, 1969, shall be honored as though purchased at the new rate prescribed herein.

4. That interstate express and interstate local commutation tickets outstanding on October 26, 1969, shall be honored as though purchased at the new rate prescribed herein.

5. That D. C. Transit revise the fare zone boundaries, in Tariff No. 41, relating to Rockville, Maryland, as shown below:

(A) Fare zones six (6) and seven (7) on routes 03, 04, 05 and 06 be combined into a new fare zone six (6) between Montgomery Avenue and Halpine Road and Montgomery Avenue and Laird Street, Rockville (end of line).

(B) Fare zones six (6) and seven (7) on routes Q1, Q7 and Y8 be combined into a new fare zone six (6) between Viers Mill Road and Atlantic Avenue and North Washington Street and Montgomery Avenue, Rockville; and that the next fare zone, seven (7), begin at North Washington Street and Montgomery Avenue for these routes and that all subsequent zones be renumbered accordingly.

(C) Fare zones six (6), seven (7) and eight (8) on routes Q3 and T2 be combined into a new fare zone six (6) between River Road and Falls Road and North Washington Street and Montgomery Avenue, Rockville, and that the next fare zone for these routes, seven (7), begin at North Washington Street and Montgomery Avenue and that all subsequent zones be renumbered accordingly.

6. That the program for purchasing an annual average of new air-conditioned buses in a number equal to one-fourteenth (1/14th) of the number of buses in applicant's fleet, established by the Commission in Order No. 773, be, and it is hereby, suspended.

7. That the applicant's account for Track Removal and Repaving Expense be charged the amount of $115,825.94 equally over the 12-month period beginning November 1, 1969, with a contra-credit to the Reserve for Track Removal and Repaving.

8. That the applicant report monthly, in a form to be prescribed by the Staff, on its efforts to provide all scheduled service, and to have an adequate bus maintenance program, an adequate research and development group, and a sufficient number of street supervisors.

BY DIRECTION OF THE COMMISSION:

George A. Avery

GEORGE A. AVERY
Chairman

HOOKER, Commissioner, not participating.

PRESENT, PROPOSED AND AUTHORIZED FARES

Application No. 573

	Present Fares	Proposed Fares	Authorized Fares
District of Columbia			
Cash	$ .30	$ .35	$ .32
Token	.30(4/1.20)	.32(5/1.60)	.32(5/1.60)
Interline - To D.C. Transit	.25	.30	.27
- From D.C. Transit	.30	.35	.32
Capitol Hill Express	.65 (a)	.70 (d)	.70 (e)
Minibus Downtown Shopper	.10	.15	.10
School	.10	.10	.10
Transfer	Free	Free	Free
Maryland Intrastate			
Zone 1	$ .30	$ .35	$ .32
2	.30	.35	.32
3	.45	.50	.47
4	.50	.55	.52
5	.55	.60	.57
6	.60	.65	.62
7	.65	.70	.67
8	.70	.75	.72
9	.75	.80	.77
10	.80	.85	.82
11	.85	.90	.87
12	.90	.95	.92
D.C.-Md. Interstate Local			
Zone 1	$ .45 (b)	$ .50	$ .47
2	.55 (b)	.60	.57
3	.65 (b)	.70	.67
4	.75 (b)	.80	.77
5	.80 (b)	.85	.82
6	.85 (b)	.90	.87
7	.90 (b)	.95	.92
8	.95 (b)	1.00	.97
9	1.00 (b)	1.05	1.02
10	1.05 (b)	1.10	1.07
11	1.10 (b)	1.15	1.12
12	1.15 (b)	1.20	1.17

	Present Fares	Proposed Fares	Authorized Fares
D.C.-Md. Interstate Express			
D.C.-Md. Line	$ .45 (b)	$ .55 (e)	$ .50 (e)
Zone 1	.55 (b)	.65 (e)	.60 (e)
2	.65 (b)	.75 (e)	.70 (e)
3	.75 (b)	.85 (e)	.80 (e)
4	.85 (b)	.95 (e)	.90 (e)
5	.90 (b)	1.00 (e)	.95 (e)
6	.95 (b)	1.05 (e)	1.00 (e)
7	1.00 (b)	1.10 (e)	1.05 (e)
8	1.05 (b)	1.15 (e)	1.10 (e)
9	1.10 (b)	1.20 (e)	1.15 (e)
10	1.15 (b)	1.25 (e)	1.20 (e)
11	1.20 (b)	1.30 (e)	1.25 (e)
12	1.25 (b)	1.35 (e)	1.30 (e)
Silver Rocket			
2 Zones	$ .35	$ .35	$ .35
Addl Zones	.10 ea addl zone Transfer Privilege	.10 ea addl zone Transfer Privilege	.10 ea addl zone Transfer Privilege
D. C. Stadium	$ .75	$ .75	$ .75
Virginia Interstate Zone			
Rt. C-1 Langley	$ .10 (c)	$ .10 (c)	$ .10 (c)

(a) or valid transfer plus 35¢ cash
(b) valid transfer or token has 30¢ value toward total cash fare
(c) available only in addition to D.C.-Md. Interstate or Md. Intrastate fare
(d) or valid transfer or token plus 38¢ cash
(e) transfer or token has 32¢ value

Note: Combination of tokens may be used for payment of fare.